* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No. 1381of 2006**

Judgment reserved on: May 9, 2007

% Judgment delivered on: May 23, 2007

The Commissioner of Income Tax
Delhi – IV, New Delhi ...Appellant

Through Mrs. Prem Lata Bansal with
Ms. Sonia Mathur, Advocates

Versus

M/s Highgain Finvest Pvt. Ltd.
C/o O.P. Sapra & Associates
C-763, New Friends Colony
New Delhi ...Respondent

Through Dr. Rakesh Gupta with Mr. Sandeep
Sapra, Advocates

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MADAN B. LOKUR, J.

The Revenue is aggrieved by an order dated 10th March, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'G' in ITA No.4438/Del/05 relevant for the assessment year 1997-98.

2. After hearing learned counsel for the parties, we admit this appeal under Section 260A of the Income Tax Act, 1961 (the Act) and frame the following substantial question of law for consideration:

> Whether the Income Tax Appellate Tribunal was justified in law in holding that the initiation of proceedings under Section 147/148 of the Income Tax Act, 1961 was bad in law?

3. Filing of paper books is dispensed with.

4. The assessee carries on the business of financing and investment. In respect of the assessment year 1997-98, the assessee filed its return of income declaring an income of Rs.42,700/-. The return was processed under Section 143(1)(a) of the Act on 24th March 1998.

5.

5. On 28th April, 2003, the Assessing Officer received a letter from the Additional Director of Income Tax (Investigation), Unit VII, New Delhi informing him that the assessee was involved in giving and taking bogus entries/transactions during the financial year 1996-97. It appears that the Assessing Officer was also informed that there was a survey in the office premises of one Sanjay Rastogi, Chartered Accountant and in his deposition the said Sanjay Rastogi stated that a credit of Rs.5,00,000/- was given by M/s Mehram Exports Pvt. Ltd. to the assessee and that this was a bogus transaction.

6. Based on the above information, the Assessing Officer recorded the following reasons for issuing a notice under Section 148 of the Income Tax Act, 1961:

> "It has been informed by the Additional Director of Income Tax (Investigation), Unit VII, New Delhi vie letter No. 138 dated 08.04.2003 that this company was involved in the giving and taking bogus entries/transactions during the F.Y. 1996-97, as per the deposition made before them by Shri Sanjay Rastogi, C.A. during a survey operation conducted at his office premises by the Investigation Wing. The particulars of some of the transaction of this nature are as under: -

Date	Particulars of cheque	Debit Amount	Credit Amount
18.11.96	305002 Through the Bank Account No. CA 4266 of M/s. Mehram Exports Pvt. Ltd. in the P.N.B., New Rohtak Road, New Delhi.	5,00,000/-	

NOTE: It is noted that there might by more such entries apart from the above.

The return of income for the A.Y. 1997-98 was filed by the assessee on 04.03.1998 which was accepted under section 143(1) at the declared income of Rs.42,00/-. In view of these facts, I have reason to believe that the amount of such transactions particularly that of Rs.5,00,000/- (as mentioned above) has escaped the assessment within the meaning of the proviso to section 147 and clause (b) to the Explanation 2 of this section.

Submitted to the Addl. CIT, Range-12, New Delhi for approval to issue notice u/s 148 for the Asstt. Year 1997-98, if approved."

7. The assessee contested the reopening of his assessment before the Commissioner of Income Tax (Appeals) [CIT (A)]. While rejecting the challenge made by the assessee, the CIT (A) held that the assessee had merely disclosed the fact that he had received share application money. What the assessee did not disclose was the true source and nature of the receipt and to this extent, the assessee did not make a full and true disclosure of facts. Since the assessee did not fully

and truly disclose all material facts necessary for assessment, the Assessing Officer could reopen the assessment even though four years had gone by from the end of the relevant assessment year. On the merits of the case, the CIT (A) held that the information received by the Assessing Officer was specific and clear and, therefore, no error had been committed in reopening the assessment.

8. In appeal before the Tribunal, it was contended on behalf of the assessee that the Assessing Officer had merely acted on the basis of some letter without making any enquiry in respect of the truth of the contents of that letter. Consequently, it was contended that the reasons recorded were not those of the Assessing Officer but were effectively those of the Additional Director of Income Tax (Investigation), Unit VII, New Delhi. The Tribunal took the view that the Assessing Officer had not made any enquiry or investigation on his own to form a belief that income of the assessee had escaped assessment. It also concluded that there was nothing to show in what capacity Sanjay Rastogi had made his statement and, therefore, the information obtained by the Assessing Officer is vague, hearsay and indefinite having no direct

nexus with the formation of belief regarding escapement of income. On this basis, the Tribunal came to the conclusion that the initiation of proceedings was invalid.

9. We are of the opinion that the Tribunal erred in arriving at the conclusion that it did. At the outset, it must be appreciated that the Supreme Court has said in ***Raymond Woollen Mills Ltd. v. Income-tax Officer, (1999) 236 ITR 34*** that the Court is only required to see whether there is some prima facie material on the basis of which the Revenue could reopen the case. The sufficiency or correctness of the material cannot be gone into at this stage.

10. Applying the law laid down by the Supreme Court, what has to be considered is whether there was some material, even though of a prima facie nature, which would constitute "information" enabling the Assessing Officer to have a reason to believe that income had escaped assessment. On a perusal of the reasons recorded by the Assessing Officer, it is clear that he had relied upon information received by him to the effect that a survey operation was conducted at the office

premises of Sanjay Rastogi. Information was given by Sanjay Rastogi that at least in respect of one cheque bearing No.305002 dated 18th November, 1996, a transaction had taken place which related to a bogus entry concerning M/s Mehram Exports Pvt. Ltd. The bank and the account number relating to the bogus entry/transaction was also mentioned. This, in our opinion, was adequate and specific material to come to the conclusion that income had escaped assessment because of a bogus transaction having been entered into between the assessee and M/s Mehram Exports Pvt. Ltd. Whether eventually the information is correct or not cannot be decided at this stage as held in ***Raymond Woollen Mills***.

11. In ***Income-tax Officer v. Lakhmani Mewal Das, (1976) 103 ITR 437***, it has been held that there is a duty cast upon the assessee to make a full and true disclosure of the primary facts at the time of original assessment. The Income Tax Officer can issue a notice under Section 148 of the Act in respect of an assessment if he has reason to believe that income chargeable to tax has escaped assessment and that such income has escaped assessment by reason of an omission or failure

on the part of the assessee to fully and truly disclose all material facts for the purposes of making an assessment. Of course, the reason for initiating proceedings under Section 148 of the Act must have a rational connection or a direct nexus with the material which leads the Income Tax Officer to form a belief that income has escaped assessment due to the failure of the assessee to fully and truly disclose all material facts.

12. In so far as the present case is concerned, as we have already indicated above, there was material to prima facie come to the conclusion that the assessee had not disclosed all relevant facts truly and fully. There can be no doubt that on the facts of the present case, there was a live link or a direct nexus between the material which suggested escapement of income and the information on the basis of which it could be concluded that income had escaped assessment. The reasons recorded by the Assessing Officer specifically related to a particular transaction, by way of an example, in respect of the concerned financial year which would suggest that a bogus entry or a transaction had been generated. If the fact regarding the bogus entry or transaction is found to be correct, it may be difficult to say that income of Rs.5,00,000/-, the

subject matter of the bogus entry, had not escaped assessment.

13. Under the circumstances, we are satisfied that there was enough material before the Assessing Officer to initiate proceedings under Section 147/148 of the Act and that the Tribunal had failed to correctly appreciate the legal position and instead of proceeding on the basis that there must be some prima facie material, the Tribunal erroneously proceeded on the basis that the material must stand the test of proof in regular proceedings. This is not the law as laid down by the Supreme Court and, therefore, we have no hesitation in answering the substantial question of law in the negative.

14. Since the Tribunal has not gone into the merits of the case, we remand the case back to it for a decision on merits.

15. The appeal is disposed of.

Madan B. Lokur, J

May 23, 2007 V.B. Gupta, J
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